IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL No. 1138 of 2005

in

WRIT PETITION (LODGING) NO. 2378 of 2005

Ismailbhai Mohamadbhai Patel & Ors. .. Appellants

versus

Brihanmumbai Municipal Corporation
and others .. Respondents

...

Mr.M.P. Vashi a/w Mr.Santosh Shetty i/b M/s.M.P.Vashi & Associates for the appellant.

Mrs.V.K. Khatau for the respondent nos.1 and 2.

Mr.P.G. Sawant, Assistant Government Pleader for the respondent no.3.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ

DATED : 20th December 2005.

P.C.:

. Heard.

2. Admit.

3. Mrs.V.K. Khatau, Advocate waives service for respondent nos.1 and 2.

4. Mr.P.G. Sawant, Assistant Government Pleader waives service for respondent no.3.

5. Appeal is heard finally at this stage. The learned single Judge was not right in dismissing the petition on the ground of alternative remedy of appeal. The order that was impugned in the Writ Petition was an order passed u/s.394(4) of the Mumbai Municipal Corporation Act 1888 and the said order is not amenable to correction in appeal. The learned Single Judge committed an error in construing the order dated 26th September 2005 passed by the Assistant Commissioner, K-East Ward as an order u/s.394(5) while the order is u/s.394(4) of the Act of 1888.

6. Consequently, the Writ Petition is allowed. The impugned order dated 25th October 2005 is set aside. Writ Petition is restored to file for fresh consideration by the learned Judge in accordance with law. No costs.

(R.M. LODHA, J)

(D.G. KARNIK, J)